



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Joe Beaty
County Auditor
Stephens County
Breckenridge, Texas

Dear Mr. Beaty:

Opinion No. 0-5979

Re: Fees of County Clerks in a
lunacy proceeding and another
question.

Your letter of April 19, 1944, requesting the
opinion of this department on the questions stated there-
in is as follows:

"Stephens County is on a fee system.

"I would like to know if the County
Clerk is or is not entitled to any fee for
probating the court's action in a lunacy
case.

"No. 2. Also would County Clerk be en-
titled to a fee in probating an application
for a person to be sent to a T. B. sanitor-
ium?"

Title 92, Vernon's Annotated Civil Statutes per-
tains to the apprehension, arrest and trial of persons of
unsound mind not charged with a criminal offense. Article
5561, Vernon's Annotated Civil Statutes, provides:

"In such cases the officers shall be
allowed the same fees as are now allowed
for similar services performed in misde-
meanor cases, and the jurors shall each
be allowed a fee of One (\$1.00) Dollar, to

Honorable Joe Beaty - page 2

be paid out of the estate of the defendant if he have an estate, otherwise by the County on accounts approved by the County Judge."

You are respectfully advised that if the defendant in a lunacy proceeding has an estate the fees of the County Clerk should be paid out of said estate. However, if the said defendant does not have an estate from which to pay the costs in such a proceeding, then the fees of the County Clerk and the fees of other officers, as well as the jury fees, should be paid by the county out of the General Fund of said county.

We now consider your second question. Articles 3239 to 3251, inclusive, Vernon's Annotated Civil Statutes, deal with State tuberculosis sanitoriums, and the admission of patients thereto. Article 3242 provides that the parent, guardian or friend of any patient seeking admission to the State Tubercular Hospital may make application in writing and under oath to the County Judge of the county wherein such patient resides, for admission of said patient into the State Colony or Hospital. Said statutes provide certain requirements as to what said application shall contain, such as name, age, relatives, property, etc. Article 3243 provides that the application must be accompanied by the kind of physician's certificate outlined by said statute, etc. Article 3244, among other things, provides that the County Judge, if satisfied that a person should be admitted, shall forward the application described in Article 3242, together with the County Judge's application for admission for said patient, to the State Colony or Hospital. Patients are classed as indigent, non-indigent and private patients.

We have been unable to find any statute which provides a fee for the County Clerk for his services in such matters.

Statutes prescribing fees for public officers are strictly construed; and hence a right to fees may not rest an implication. *McCalla v. City of Rockdale*, 246 S. W. 654.

The Constitution fixes the compensation of certain officers, and authorizes the Legislature to provide by law for the compensation of all other officers, servants, agents and public contractors. Pursuant to the authority thus

conferred, numerous statutes have been passed fixing the compensation for various classes of officers. As hereinabove stated, the compensation of public officers is fixed by the Constitution and statutes. An officer may not claim any money without a law authorizing him to do so, and clearly fixing the amount to which he is entitled. *Binford v. Robison*, 244 S. W. 807; *McLennan County v. Roggess*, 217 S. W. 345; *Duclos v. Harris County*, 291 S. W. 811, affirmed 298 S. W. 417; *Crosby County Cattle Co. v. McDermott*, 291 S. W. 292.

On May 20, 1932, this department held in an opinion written by Honorable J. A. Stanford, Jr., Assistant Attorney General, recorded in Vol. 334, pp. 799-800, Letter Opinions of the Attorney General of Texas, that the County Judge is not entitled to any fees for the duties performed by him in securing admission of tuberculars to the State Colony or Hospital. Therefore, you are respectfully advised that it is our opinion the County Clerk is not entitled to any fee in such cases.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

AV-MR

acting
4308
E. J. Shattuck

